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**BEFORE THE PUBLIC UTILITIES COMMISSION**
**OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues. | Rulemaking 13-11-005<br>(Filed November 14, 2013) |

# COMMENTS OF MARIN CLEAN ENERGY ON PROPOSED DECISION PROVIDING GUIDANCE FOR INITIAL ENERGY EFFICIENCY ROLLING PORTFOLIO BUSINESS PLAN FILINGS


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Recommendations Related to Existing Conditions Baselines:

1. The Commission should clarify that: (1) the evaluation of the 2017 and 2018 data will be focused on recommending improvements to the default policy; and (2) additional years of data will be evaluated to determine whether the default policy should be continued.

2. The Commission should limit the scope of the staff resolution on measure-level baseline rules to those measures not covered by the program level rules in the Proposed Decision and should extend the deadline for the staff resolution to June 2017.

Recommendations Related to Statewide Programs:

1. The Commission should clarify the decision-making process for statewide program design, cost-sharing, and attribution of savings.

2. The Commission should avoid a decision-making process for statewide programs that allows utility activities that would disadvantage CCAs.

3. The Commission should direct the California Energy Efficiency Coordinating Committee to regularly discuss the design, funding, and attribution of savings for statewide programs followed by the Commission providing a formal approval of a tier 2 advice letter filed by the lead administrator of the statewide program.

Recommendations Related to Evaluation, Measurement, and Verification:

1. Commission should require IOUs to transfer the entire approved annual EM&V budget to CCAs on January 15 each year.

2. The Proposed Decision should be modified to allow Energy Division to modify the default allocation if sufficient EM&V funds are not available.

3. The Commission should include an authorization in the Proposed Decision for MCE's annual EM&V budget of $66,098 based on a gross up of programmatic budgets.

Other Recommendations:

1. The Commission should direct program administrators to reflect their solicitation strategies for all energy efficiency in their business plans.

2. The Commission should strike the language in the Proposed Decision that indicates only utilities are able to handle a portfolio management role with portfolios containing both solicitations and programmatic activities for energy efficiency.

3. The Commission should clarify that both the California Public Utilities Code and prior Commission decisions allow new CCA program administrators to propose a business plan on or after January 15, 2017.

4. The Commission should not require annual budget advice letters to be filed until the initial business plans are approved.

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# COMMENTS OF MARIN CLEAN ENERGY ON PROPOSED DECISION PROVIDING GUIDANCE FOR INITIAL ENERGY EFFICIENCY ROLLING PORTFOLIO BUSINESS PLAN FILINGS

Pursuant to Rule 14.3 of the California Public Utility Commission's ("Commission") Rules of Practice and Procedure, Marin Clean Energy ("MCE") respectfully submits the following comments on the *Proposed Decision Providing Guidance for Initial Energy Efficiency Rolling Portfolio Business Plan Filings* filed on July 19, 2016 in this proceeding ("Proposed Decision").

## I. INTRODUCTION

MCE appreciates the opportunity to comment on a number of important issues in the Proposed Decision. MCE supports the default policy for an existing conditions baseline and provides recommendations to ensure it is adequately evaluated and developed on a timeline that acknowledges the business plan process. MCE provides comments to improve to the decision-making process for statewide programs. MCE requests changes to the EM&V rules to allow flexibility and requests an EM&V budget based on a gross up of the programmatic expenditures. MCE makes several other recommendations to reflect all energy efficiency activities within business plans and refine language consistent with the California Public Utilities Code. These recommendations are important to ensure a sound energy efficiency policy framework for all program administrators.

## II. THE COMMISSION SHOULD COLLECT MORE THAN TWO YEARS OF DATA TO EVALUATE THE SUCCESS OF THE DEFAULT POLICY FOR AN EXISTING CONDITIONS BASELINE

MCE recommends the Commission clarify that it will evaluate more than two years' worth of data before fundamentally reconsidering the default policy for an existing conditions baseline. The Proposed Decision adopts a default policy for an existing conditions baseline[1] intended to enable additional projects to materialize.[2] The Commission should evaluate data collected in 2017 and 2018 by 2020 to support demand forecasting and make policy recommendations.[3] However, the decision is vague about whether the evaluation is intended to make recommendations concerning the continuation of the new default existing conditions policy. The Commission should clarify that: (1) the evaluation of the 2017 and 2018 data will be focused on recommending improvements to the default policy; and (2) additional years of data will be evaluated to determine whether the default policy should be continued. It is an error of fact to assume the significant programmatic and policy changes necessary to shift to existing conditions as the default baseline[4] will produce the data necessary to evaluate the continuation of the policy by the end of 2018. The Commission should evaluate more information before reconsidering the validity of default policy.

[1] Proposed Decision at p. 30.
[2] Proposed Decision at p. 31.
[3] Proposed Decision at p. 31-32.
[4] Some of these changes include: developing tools to measure metered-based savings (*e.g.* normalized metered energy consumption); designing appropriate incentives (D.14-10-046 at p. 52; Proposed Decision, Conclusion of Law 13 at p. 82); determining measure-level baseline rules (Proposed Decision, Ordering Paragraph 4); establishing new priorities and methods for evaluating the impacts of programs (Proposed Decision at p. 65-67); and adequately accounting for free ridership (Proposed Decision at p. 19).

## III. THE COMMISSION SHOULD LIMIT THE INITIAL SCOPE OF THE MEASURE-LEVEL BASELINE RULES TO THOSE MEASURES NOT ADDRESSED IN THE PROPOSED DECISION

The Commission should limit the scope of the staff resolution on measure-level baseline rules to those measures not covered by the program level rules in the Proposed Decision. The Proposed Decision calls for staff to prepare a resolution articulating consensus recommendations on measure-level baseline rules by the end of 2016.[5] However, this contradicts the statement in the Proposed Decision that "this decision represents the entirety of the guidance we expect the Commission to give prior to business plan submittal."[6] The additional guidance on measure-level baseline rules based on the staff resolution may impact the design of incentives, intervention strategies, and ultimately the content of business plans.

It would be an error of fact to assume program administrators can incorporate this information into their business plans between December 31, 2016 when the staff resolution is due[7] and January 15, 2017 when business plans are due.[8] Program administrators need adequate time to incorporate guidance into their business plans. Additionally, it would be an error of fact to assume that program administrators have adequate resources to develop consensus on comprehensive measure-level rules while simultaneously working to prepare business plans and solicit stakeholder feedback over the next four months. The Commission should allow more time to deliberate on measure-level baseline rules once the initial business plans are filed and approved. The Commission should limit the scope of the initial measure-level baseline recommendations to any measures that are not covered by the program-level rules in the Proposed Decision and should extend the deadline for the staff resolution to June 2017.

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[5] Proposed Decision at p. 44.
[6] Proposed Decision at p. 77.
[7] Proposed Decision at p. 44.
[8] Proposed Decision at p. 78.

## IV. THE COMMISSION SHOULD PROVIDE ADDITIONAL GUIDANCE ON THE DECISION-MAKING PROCESS FOR STATEWIDE PROGRAMS

The Commission should clarify the decision-making process for statewide program design, cost-sharing, and attribution of savings. The Commission provides a general definition for statewide programs in the Proposed Decision.[9] However the Proposed Decision is vague about the decision-making process between the lead administrator and the other consulting administrators.[10] Several elements of decision making for the statewide programs need to be clarified under the new definition. It is unclear how a consulting administrator may influence: (1) the design of statewide programs; (2) the share of budget and attribution of savings for the statewide programs among the lead and consulting administrators; and (3) ability to start new statewide programs or cease participation in statewide programs that are not effective. The language in the Proposed Decision could be interpreted to indicate that these decisions will be the result of collaboration among all administrators but does not clarify which entity is ultimately responsible for resolving differences. The Proposed Decision could also be interpreted to indicate that the lead administrator has complete authority over such decisions. This factual and legal ambiguity should be clarified in the decision so all administrators understand the decision-making process for statewide programs.

MCE urges the Commission to consider the decision making process in light of Senate Bill ("SB") 790[11] and the Commission's CCA Code of Conduct Decision[12] implementing that bill. In passing SB 790, the legislature found that due to the exercise of market power by electrical corporations, it is necessary to implement a code of conduct and associated rules to

[9] Proposed Decision at p. 54-55.
[10] "[I]t is important to have one entity in the role of lead administrator for each of the statewide programs, with consultation with the other administrators of other key aspects of the portfolio." Proposed Decision at p. 49.
[11] SB 790 (2011).
[12] D.12-12-036.

facilitate the implementation of CCA programs to foster fair competition.[13] The Commission decision establishing the code of conduct indicated the rules are intended to provide CCAs "the opportunity to compete on a fair and equal basis with other load serving entities, and to prevent investor-owned utilities from using their position or market power to undermine the development or operation of aggregators."[14] The code of conduct was "designed to foster fair competition by limiting utility activities that would disadvantage CCAs…."[15] An electrical corporation in a role of lead administrator for a statewide program may be in a position to disadvantage CCAs and undermine the operation of CCA energy efficiency programs. For example, a lead administrator may preclude downstream rebates and associated energy savings for heating, ventilation, and air conditioning ("HVAC") by providing statewide rebates at the upstream or midstream level.[16] This would have the effect of removing any savings associated with technical assistance provided to support HVAC installations in downstream programs thereby reducing the cost-effectiveness of those downstream programs. Similarly, if the lead administrator is in the position of determining what cost and attribution share will go to consulting administrators or implementers, this could have the inappropriate effect of delegating oversight authority to the electrical corporation. The Commission should direct the California Energy Efficiency Coordinating Committee to regularly discuss the design, funding, and attribution of savings for statewide programs followed by the Commission approving a formal proposal via tier 2 advice letter filed by the lead administrator. The Commission should avoid a decision-making process for statewide programs that allows utility activities that would disadvantage CCAs.

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[13] SB 790, Sec. 2 (f)-(h).
[14] D.12-12-036 at p. 2.
[15] D.12-12-036 at p. 7.
[16] Reply Comments of MCE to Ruling of Assigned Commissioner and Administrative Law Judge Seeking Input on Approaches for Statewide and Third-Party Programs at p. 3.

## V. THE COMMISSION SHOULD REQUIRE SOLICITATIONS FOR ENERGY EFFICIENCY TO BE REFLECTED IN THE BUSINESS PLANS

The Commission should direct program administrators to reflect their solicitation strategies for all energy efficiency efforts in their business plans. The Proposed Decision acknowledged a tension between all-source solicitations and programmatic efforts.[17] The Proposed Decision should address that tension by calling for administrators to include those solicitation strategies, even those ordered under different proceedings at the Commission, in their business plans. This is consistent with existing business plan guidance to discuss how strategies are coordinated with other demand-side options[18] and may help utility administrators satisfy the general approach to Third Party Programs provided in the Proposed Decision.[19] Inclusion of these strategies will help ensure a coordinated and transparent planning effort for energy efficiency spending and procurement. This will also create a single repository to facilitate Commission and stakeholder awareness of actual spending and associated energy efficiency activity[20] and will begin to coordinate the demand and supply sides of energy efficiency and distributed energy resources procurement.

## VI. THE COMMISSION SHOULD PROVIDE ADDITIONAL CLARITY TO THE PROCESS FOR TRANSFERING EM&V FUNDS TO CCAS

The Commission should require Investor Owned Utilities ("IOUs") to transfer the entire approved annual EM&V budget to CCAs on January 15 each year. The Proposed Decision requires the utility program administrators to handle fund transfers for EM&V work in the same

[17] Proposed Decision at p. 61.
[18] D.15-10-028, Appendix 3 at p. 2.
[19] Proposed Decision at p. 58-64.
[20] It is worth noting that one additional repository is the Energy Savings Assistance Program activities.

manner that they handle program funds.[21] This is intended not to disrupt IOU contractual arrangements with Regional Energy Networks ("RENs") and CCAs that are fully functional already but not consistent.[22] However, the rule is based on a factual error. As stated in MCE's comments on the June 8th ruling in this proceeding, there is no functional process for CCAs to receive EM&V funds.[23] If there are functional contractual arrangements with the RENs, the Proposed Decision can preserve them by simply providing the needed clarity specifically for CCAs. Additionally, EM&V funds are distinct from other program funds, and clarifying the process to transfer EM&V funds will not necessarily impact the transfers of other program funds.

The rule, as stated in the Proposed Decision, will result in an overly complex process that unnecessarily burdens Commission staff and program administrators. There are two manners in which CCAs currently receive program funds from IOUs depending on the type of funds (*i.e.* electric or gas). For electric funds, MCE receives quarterly payments based on the last approved budget.[24] For gas funds, MCE was directed to enter into a contract with PG&E modeled after the existing contracts with the RENs.[25] This contract requires MCE to invoice PG&E on a monthly basis for gas funds spent in the prior month. These invoices must be approved by Energy Division staff in order for PG&E to transfer the gas funds to MCE. The rule in the Proposed Decision would have the bizarre result of requiring separate processes for transferring electric and gas EM&V funds for a single EM&V study. The process would require Energy Division staff to unnecessarily approve transfers of gas funds that were already approved by the

[21] Proposed Decision, Conclusion of Law 55 at p. 87.
[22] Proposed Decision at p. 71.
[23] Comments of Marin Clean Energy to Administrative Law Judge's Ruling Seeking Comment on Evaluation, Measurement, and Verification and Energy Savings Performance Incentive Issues at p. 5.
[24] D.14-10-046, Ordering Paragraph 24 at p. 167-68.
[25] D.14-10-046, Ordering Paragraph 26 at p. 168.

Commission when it approved the overall EM&V budget. It would also require MCE to advance its own operational revenues to cover EM&V expenses only to be reimbursed after the fact. The Commission should avoid this overly complex process, that unnecessarily burdens Commission staff and program administrators, and simply order IOUs to transfer the approved EM&V budget in whole on January 15 each year.

The Commission should authorize an EM&V budget for MCE based on a gross up of programmatic budgets. Through discussions with PG&E, MCE discerned one possible reason for difficulty in receiving EM&V funds for the 2013-2015 program years. MCE's authorized budget is based entirely on programmatic expenditures (*i.e.* all non-EM&V expenditures). While it is the convention for program administrators to identify their programmatic expenditures and then gross up to include the EM&V funding, MCE's authorized budget does not include a gross up of 4% for EM&V funding. Considering MCE's most recently approved budget for programmatic expenditures is $1,586,347[26] a gross up to include EM&V would result in an overall annual budget of $1,652,445 as demonstrated in Table 1 below. The Commission should include an authorization for MCE to receive an EM&V budget based on a gross up of programmatic budgets in the Proposed Decision.

**Table 1: Programmatic Expenditures Gross Up to Include EM&V Funding**

| Programmatic Expenditures | EM&V Budget | Total Budget |
|---|---|---|
| $1,586,347 | $66,098 | $1,652,445 |
| 96% | 4% | 100% |

## VII. A PROPORTIONATE BUDGET FOR EM&V IS INADEQUATE TO ADDRESS THE DIFFERENCES IN THE SIZE OF PROGRAM ADMINISTRATORS

The Commission should allow flexibility for smaller program administrators to access additional funds if needed for administrator-led EM&V activities. The Proposed Decision authorizes 4% of the portfolio to be used for EM&V with 40% of that funding divided

[26] D.16-05-004, Ordering Paragraph 2 at p. 13.

proportionately among program administrators based on total program budgets.[27] As discussed in MCE's comments to the June 8, 2016 ruling in this proceeding, smaller program administrators such as CCAs and RENs may have such small budgets that their proportional share will be insufficient to conduct market assessments, embed Measurement and Verification ("M&V") into programs, and evaluate comprehensive programs.[28] With an increasing emphasis on metered energy savings, subsequent impact evaluation efforts involve expensive statistical analyses such as randomized control trials. The Commission has currently authorized over $1 million for a study of one program utilizing such a method.[29] At the current proposed funding levels, MCE's share of the EM&V budget would amount to less then $40,000; this is insufficient to support the robust analyses contemplated for the new existing conditions baseline program designs. While MCE supports a default allocation as described in the Proposed Decision, the decision errs when it concludes that "this will ensure sufficient funds are available."[30] The Proposed Decision should allow Energy Division to modify the default allocation if sufficient funds are not available.

## VIII. THE COMMISSION SHOULD ADDRESS LANGUAGE THAT IS NOT SUPPORTED BY EVIDENCE AND CONTRADICTS THE PUBLIC UTILITIES CODE

The Proposed Decision should remove an unsupported conclusion from dicta due to a lack of evidence and contradictions with the Public Utilities Code. The Proposed Decision notes that "[h]aving both programmatic and all-source solicitation options within one sector highlights

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[27] Proposed Decision at p. 68-70.
[28] Comments of Marin Clean Energy to Administrative Law Judge's Ruling Seeking Comment on Evaluation, Measurement, and Verification and Energy Savings Performance Incentive Issues at p. 3-5.
[29] "Impact Evaluation of Comparative Energy Usage Report Programs," DNVGL. The budget for this program is reported at $1,123,240 according to http://eestats.cpuc.ca.gov/Views/PSRViewer.aspx (August 4, 2016).
[30] Proposed Decision at p. 70.

the importance of careful portfolio planning and solicitation rules. **No other entity besides the utility will be able to handle this portfolio design role.**"[31] The conclusion that only utilities are able to handle the portfolio design role is not supported by any reference to the record. It is also contradictory to sections 366.2 and 381.1 of the California Public Utilities Code. Section 366.2 assigns CCAs the sole responsibility for procurement activities on behalf of CCA customers.[32] Section 381.1 grants CCAs authority to administer energy efficiency programs. The procurement role includes portfolio management which necessarily involves solicitation of resources, which may include energy efficiency. The programmatic role is similar to the role carried out by utilities. Taken together, CCAs have a statutory right to handle a design role over a portfolio that includes both all-source solicitations and programmatic options. The Commission should strike the sentence above that indicates only utilities are able to handle this role.

The Commission should clarify that the law allows new CCAs to propose a business plan on or after January 15, 2017. The Proposed Decision calls for MCE and any other CCA proposing a business plan to file on January 15, 2017.[33] CCAs are eligible to apply to become program administrators under California law[34] and the Commission has authorized new administrators to apply at any time.[35] The Commission should amend Ordering Paragraph 2 to clarify that new CCAs can file on or after January 15, 2017. This change is required to ensure the Ordering Paragraph is consistent with the Public Utilities Code.

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[31] Proposed Decision at p. 62 (**emphasis added**).
[32] Cal. Pub. Util. Code § 366.2(5).
[33] Proposed Decision, Conclusion of Law 2 at p. 88.
[34] Cal. Pub. Util. Code § 381.1.
[35] D.14-01-033, Ordering Paragraph 4 at p. 50-51.

## IX. THE COMMISSION SHOULD START THE ANNUAL BUDGET ADVICE LETTER FILINGS ONCE BUSINESS PLANS ARE APPROVED

The Commission should not require annual budget advice letters to be filed until the initial business plans are approved. The Proposed Decision indicates that the annual budget advice letter filing is due on September 1, 2016.[36] However, this direction is contrary to the decision that established the annual budget advice letter.[37] That decision called for the annual budget advice letter to be "consistent with the last Commission-approved business plan."[38] The decision also indicated that the Commission may have to defer budget filings to 2017 depending on how long it takes the Commission to review and approve business plans.[39] Considering no business plans will be filed until January 15, 2017,[40] there will be no approved business plans on September 1, 2016. The Commission should remain consistent with D.15-10-028 and avoid the regulatory churn associated with processing an annual budget advice letter when no approved business plans exist.

MCE understands that Commission staff and program administrators are working diligently to prepare for the annual budget advice letter filing. This work should continue and the appropriate appendices and the online tool should be fully developed so that annual budget advice letters can use the system once the first business plans are approved.

## X. CONCLUSION

MCE thanks Assigned Commission Peterman and Administrative Law Judge Fitch for their thoughtful consideration of these comments on the Proposed Decision.

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[36] Proposed Decision at p. 77.
[37] D.15-10-028 at p. 59-63.
[38] D.15-10-028 at p. 59.
[39] D.15-10-028 at p. 61.
[40] Proposed Decision at p. 78.

Respectfully submitted,

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## APPENDIX A
## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

**Conclusions of Law**

17. The Commission should continue to study the impact of baseline policy, especially the changes ordered in this decision. Staff should sponsor a study collecting 2017 and 2018 data, and return to us with recommendations for *improving* implementation before the start of 2020. *Staff should sponsor a longer-term study to explore whether the baseline policy should be continued using data collected from 2017-2024.*

31. The Commission should defer to a working group organized by staff or utilize the California Technical Forum to develop a list of measure-level baseline rules *that will take effect after the first business plans are filed*.

New Conclusion of Law 37b. *The California Energy Efficiency Coordinating Committee should regularly discuss the design, funding, and attribution of savings for statewide programs followed by the Commission providing a approval of a formal proposal via tier 2 advice letter filed by the lead administrator.*

New Conclusion of Law 53.b. *MCE should be allocated an annual EM&V budget based on a gross up of programmatic budgets.*

54. EM&V budgets for non-IOU program administrators, including CCAs and RENs, should be allocated from among the 40 percent of the EM&V budget that goes to program administrators, on a proportional basis (based on each program administrator's total program budget) within the utility service areas where the non-IOU administrators operate. *Energy Division staff can modify the proportional budget allocation for EM&V funding via tier 2 advice letter when sufficient funds are not available.*

55. The process to transfer EM&V funds from utility program administrators to ~~non-IOU~~ *REN program* administrators should be the same as used for regular program funds. *The process for CCA program administrators should be to transfer the entire EM&V budget on January 15 each year.*

New Conclusion of Law 63. *While encouraged to file on January 15, 2017, new CCA program administrators can file a business plan after that date.*

New Conclusion of Law 64. *Annual Budget Advice Letters should be consistent with an approved business plan and should not be filed by a PA until their initial business plan is approved.*

New Conclusion of Law 65. *Program Administrators should reflect all of their solicitation strategies for energy efficiency in their business plans.*